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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THOMAS NEIL AND HELEN MAXINE GWYN)
dba GWYN FARMS, INC.,)
Appellants,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 78-159

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from respondent's Order of Cancellation of Ground Water Permit No. G3-21951 (QB-178B), came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David Akana (presiding) at a formal hearing in Seattle, Washington on October 20, 1978.

Appellants appeared pro se; respondent was represented by Robert E. Mack, Assistant Attorney General.

Having heard the testimony, having examined the exhibits and having considered the contentions of the parties, the Board comes

DA/LB

1 to these

2 FINDINGS OF FACT

3 I

4 Appellants Neil and Helen Gwyn (hereinafter "appellants") are the
5 owners of certain lands located in the Quincy Ground Water Subarea,
6 Grant County, Washington. Appellants' permit allowed the withdrawal
7 of water from and the application of water upon lands located in the
8 SE 1/4 of Sec. 28, T. 18 N., R. 25 EWM in Grant County.

9 II

10 The permit included a development schedule which indicated that
11 complete application of water was to be made by March 11, 1978.
12 Additionally, the permit contained the following provisions:

- 13 10. This permit is subject to termination or
14 modification, through issuance of supplemental
15 orders of the Department of Ecology, for good
16 cause, including but not limited to:
17 a. Violation of a permit condition;
18 b. Obtaining a permit by misrepresentation
19 or failure to fully disclose all relevant
20 facts; and
21 c. The receipt of new facts or information
22 that dictate that termination or modification
23 of this permit is necessary to comply with
24 the objectives of chapter 173-134 WAC.

- 25 11. The permittee shall apply the water to beneficial
26 use hereunder within three years from the date of this
27 permit or the same shall automatically terminate and
be of no further force and effect.

23 Appellant accepted the permit as conditioned in 1975.

24 III

25 Appellants own both the southeast quarter and southwest quarter
26 of Section 28. Because of a misunderstanding, they applied for and

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 2

1 received a permit for only one quarter. In 1974 appellant obtained
2 a seepage and return flow permit from the Quincy Irrigation District. Since
3 then, appellants have successfully farmed both quarters including the
4 southeast quarter of Section 28. However, the well authorized by the permit
5 was never constructed. Appellants desire to transfer the permit to
6 property owned by the U.S. Bureau of Reclamation in the NW 1/4 of Sec. 26,
7 T. 19 N., R. 26 EWM, which adjoins other property owned by appellant.
8 Negotiations for a land swap continued for some time and finally broke
9 down in January, 1978. At the present time, appellants understand that the
10 Bureau of Reclamation plans to sell the property in the late fall of
11 1978. Appellants desire an extension of time to develop their permit
12 so they can bid at the Bureau of Reclamation's land sale and thereafter
13 transfer the QB permit to such property.

14 IV

15 On March 13, 1978, respondent notified appellants that their
16 permit would be cancelled unless "good cause" was shown why the permit
17 should not be cancelled. Appellants' reply was not deemed good cause
18 by the respondent and an order cancelling the permit was issued and
19 appealed to this Board.

20 V

21 Any Conclusion of Law which should be deemed a Finding of Fact
22 is hereby adopted as such.

23 From these Findings, the Board comes to these

24 CONCLUSIONS OF LAW

25 I

With all of the available water allocated to a group of permit

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 holders in the Quincy Subarea, respondent's actions reflect a policy
2 which encourages prompt development of a limited supply of water.
3 Over 250 applications for the limited quantity of artificially stored
4 ground water are pending and must continue to be held in abeyance until
5 water is available. By failing to timely develop a well, a permit holder
6 delays development of farmland and/or deprives another person from doing
7 so.

8 In this matter, respondent seeks to cancel appellants' permit because
9 appellants have not shown it good cause. Looking for guidance to
10 RCW 90.03.320, made applicable to ground water by RCW 90.44.060:

11 Actual construction work shall be commenced
12 on any project for which permit has been
13 granted within such reasonable time as
14 shall be prescribed by the supervisor of
15 water resources, and shall thereafter be
16 prosecuted with diligence and completed
17 within the time prescribed by the supervisor.
18 The supervisor, in fixing the time for the
19 commencement of the work, or for the
20 completion thereof and the application of the
21 water to the beneficial use prescribed in the
22 permit, shall take into consideration the cost and
23 magnitude of the project and the engineering
24 and physical features to be encountered,
25 and shall allow such time as shall be
26 reasonable and just under the conditions
then existing, having due regard for the
public welfare and public interests affected:
and, for good cause shown, he shall extend the
time or times fixed as aforesaid, and shall
grant such further period or periods as may
be reasonably necessary, having due regard to
the good faith of the applicant and the public
interests affected. If the terms of the permit
or extension thereof, are not complied with the
supervisor shall give notice by registered mail
that such permit will be canceled unless the
holders thereof shall show cause within sixty
days why the same should not be so canceled.
If cause be not shown, said permit shall be
canceled. (Emphasis added.)

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 We conclude that respondent has set a reasonable period of time
2 generally applicable to the Quincy Subarea to develop a well and place water
3 therefrom to a beneficial use. For those permit holders who have not
4 met the development schedule, respondent "shall grant" further periods
5 having due regard for the "good faith of the applicant and the public
6 interests affected." While appellant has been farming the property
7 for a number of years, it does not intend to develop the well for the
8 intended property. We conclude that appellants have not shown good
9 cause for an extension of their permit. Accordingly, respondent's
10 Order of Cancellation should be affirmed.

11 II

12 Any Conclusion of Law which should be deemed a Finding of
13 Fact is hereby adopted as such.

14 From these Conclusions the Board enters this

15 ORDER

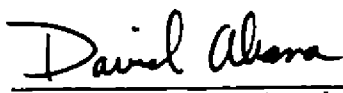
16 The Department of Ecology Order Cancelling Permit No. G3-21951
17 (QB-178B) is affirmed.

18 DATED this 30TH day of November, 1978.

19 POLLUTION CONTROL HEARINGS BOARD

20 
21 DAVE J. MOONEY, Chairman

22 
23 CHRIS SMITH, Member

24 
25 DAVID AKANA, Member

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER